

ESTTA Tracking number: **ESTTA349574**Filing date: **05/26/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Clockwork IP, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	50 Central Avenue Suite 920 Sarasota, FL 34236 UNITED STATES		

Attorney information	Michelle P. Gallon Duane Morris LLP 1180 West Peachtree Street Suite 700 Atlanta, GA 30309-3448 UNITED STATES tdmkatlanta@duanemorris.com, mpgallon@duanemorris.com Phone:404.253.6900
----------------------	--

Registration Subject to Cancellation

Registration No	3760199	Registration date	03/16/2010
Registrant	Cole Electric Inc. 1800 N. 14th Street Herrin, IL 62948 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2009/03/23 First Use In Commerce: 2009/03/23 All goods and services in the class are cancelled, namely: Installation, maintenance and repair of plumbing systems, heating systems, air conditioning systems, electrical systems, roofs, garage doors, appliances, flooring, drywall, asphalt, driveway rock, swimming pools, hot tubs, chimneys, fireplaces, satellite dishes, cable television systems, telephones, computers, insulation, windows, siding, gutters, home theatre systems, security systems, and fire alarm systems; pest control, painting, carpentry, concrete construction, masonry
--

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77813219	Application Date	08/26/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED		

	BACKGROUND CHECKED PROFESSIONALLY TRAINED
Design Mark	 The logo features a yellow circular seal on the left with the text 'TECHNICIAN SEAL OF SAFETY' in the center and 'YOUR SYMBOL OF TRUST' along the bottom curve. To the right of the seal is a blue rectangle with a yellow border. Inside the rectangle, there are three yellow checkmarks, each followed by text: 'DRUG TESTED', 'BACKGROUND CHECKED', and 'PROFESSIONALLY TRAINED'.
Description of Mark	<p>The mark consists of a yellow circular seal with the words TECHNICIAN SEAL OF written over the word SAFETY in the center of the seal and the words YOUR SYMBOL OF TRUST written along the bottom of the seal, following the curve of the circle superimposed over a blue rectangle with a yellow border with three bullet points set apart by yellow check marks, the first one followed by the words DRUG TESTED, the second one followed by the words BACKGROUND CHECKED and the third one followed by the words PROFESSIONALLY TRAINED.</p>
Goods/Services	<p>Class 037. First use: First Use: 2005/09/15 First Use In Commerce: 2005/09/15 Repair, maintenance, and installation services in the field of plumbing, heating, ventilation, air conditioning, and roofing; repair, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels</p>

Attachments	<p>77813219#TMSN.jpeg (1 page)(bytes) Petition.to.candle.cole.pdf (8 pages)(650624 bytes)</p>
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/mpg/
Name	Michelle P. Gallon
Date	05/26/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Clockwork IP, LLC.

Petitioner,

v.

Cole Electric, Inc.

Registrant.

Cancellation No. _____

Registration No. 3,760,199

Mark: EXCEPTIONAL

TECHNICIAN DRUG TESTED

BACKGROUND CHECKED

PROFESSIONALLY TRAINED And
Design

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING *ELECTRONICALLY* FILED WITH THE U.S. PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451 ON THE DATE INDICATED BELOW.

By: _____

Michelle P Gallon

Date: May 26, 2010

PETITION FOR CANCELLATION

Clockwork IP, LLC., a Delaware corporation, with its mailing address and place of business at 50 Central Ave. Suite 920, Sarasota, FL 34236 ("Petitioner"), through its attorneys, believes that it is being and will be damaged by the continued registration of Registration No. 3,760,199 for the mark EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design ("EXCEPTIONAL TECHNICIAN") owned by Cole Electric, Inc., an Illinois corporation, with its mailing address and place of business at 1800 N. 14th Street, Herrin, IL 62948, and alleges as follows. Allegations with respect to Petitioner are based upon actual knowledge. Allegations with respect to Registrant are based upon information and belief.

1. Petitioner is in the business of, among other things, providing home repair services namely plumbing services, heating, ventilation, air conditioning, and roofing services; and electrical services.

2. Petitioner owns Application Serial No. 77813219 for the mark TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED and Design for “repair, maintenance, and installation services in the field of plumbing, heating, ventilation, air conditioning, and roofing; repair, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels” in International Class 037.

3. Registrant is in the business of “plumbing systems, heating systems, air conditioning systems, electrical systems, roofs, garage doors, appliances, flooring, drywall, asphalt, driveway rock, swimming pools, hot tubs, chimneys, fireplaces, satellite dishes, cable television systems, telephones, computers, insulation, windows, siding, gutters, home theatre systems, security systems, and fire alarm systems; pest control, painting, carpentry, concrete construction, masonry.”

4. Registrant owns Registration No. 3,760,199 for the mark EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design for “installation, maintenance and repair of plumbing systems, heating systems, air conditioning systems, electrical systems, roofs, garage doors, appliances, flooring, drywall, asphalt, driveway rock, swimming pools, hot tubs, chimneys, fireplaces, satellite dishes, cable television systems, telephones, computers, insulation, windows, siding, gutters, home theatre systems, security systems, and fire alarm systems; pest control, painting, carpentry, concrete construction, masonry.” in International Class 037.

5. Registrant claims first use of the EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark in commerce on March 23, 2009.

6. Petitioner first used the mark in interstate commerce on TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED and Design several years prior to the date of Registrant's alleged date of first use on March 23, 2009. Petitioner claims a date of first use at least as early as September 15, 2005.

7. Petitioner asserts that it has grounds to bring the foregoing cancellation action pursuant to Section 2(d) of the Act, 15 U.S.C. §1052(d).

8. Inherently, and as a result of continuous and substantially exclusive use, and continuous and substantial advertising and promotion, Petitioner's TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED and Design mark has come to represent an invaluable symbol of its goodwill, and is recognized by customers and the trade as identifying Petitioner, or the services which have a source, origin, or sponsorship with Petitioner, and as distinguishing such services from the services of others, or as distinguishing Petitioner from others.

9. Petitioner is the senior user of the TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED and Design mark used in connection with "repair, maintenance, and installation services in the field of plumbing, heating, ventilation, air conditioning, and roofing; repair, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels."

10. Registrant's EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's mark TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED are similar in appearance.

11. Registrant's EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark are similar in meaning.

12. Registrant's EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark create similar commercial impressions.

13. Registrant's services identified by its EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's services identified by its TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark are virtually identical in that such services are for home repair services, including but not limited to plumbing services, heating and air conditioning services, electrical services, and roofing services.

14. Registrant's services identified by its EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's services identified by its TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF

TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark identify services that are overlapping in nature.

15. If Registrant is permitted to maintain Registration No. 3,760,199 for the EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark, confusion in the trade resulting in damage and injury to Petitioner will continue to be caused and will continue to result by reason of the similarity of the respective marks and the identical or similar services protected thereby.

16. Upon information and belief, Registrant's EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark and Petitioner's TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark identify the respective parties' services, which can be expected to target the same customers and travel in the same channels of trade.

17. Persons familiar with Petitioner and/or its TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark would likely believe that Registrant's services under the EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark emanate from the same source as those of Petitioner.

18. Persons familiar with Petitioner and/or its TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark would likely believe that Registrant's services are provided, endorsed, sponsored by, affiliated with or otherwise connected with Petitioner.

19. Persons who are familiar with Petitioner and/or its TECHNICIAN SEAL OF SAFETY YOUR SYMBOL OF TRUST DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED mark, or familiar with Registrant's EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark, and who encounter use of the marks in commerce in connection with home repair services, including but not limited to plumbing services, heating and air conditioning services, electrical services, and roofing services, are likely to be confused.

20. Since the parties' marks are the similar and in view of the related and overlapping nature of the services of the respective parties, there is a likelihood of consumer confusion.

21. Petitioner is being and is likely to be damaged by the continued registration in that Petitioner's application and use of said mark will be impaired by the continued registration of said mark of Registrant.

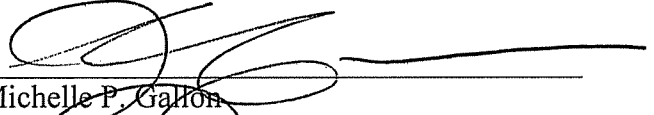
22. Since the Registrant was previously a licensee of Petitioner's marks, and Registrant's license to use Petitioner's marks was terminated in 2009, Petitioner is further damaged by the continued use and registration of Registrant's confusingly similar EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design mark.

WHEREFORE, Petitioner is being and will be damaged by the continued registration of Registration No. 3,760,199 for the mark EXCEPTIONAL TECHNICIAN DRUG TESTED BACKGROUND CHECKED PROFESSIONALLY TRAINED And Design in connection with the services in International Class 037, and respectfully requests that the petition to cancel be granted and Registration No. 3,760,199 be cancelled in its entirety.

Respectfully submitted,

Clockwork IP LLC

Dated: May 26, 2010



Michelle P. Gallon
Duane Morris LLP
1180 W Peachtree St NW
Suite 7
Atlanta, GA 30309-3448
Tel: 404-253-6995
Fax: 404-253-6901
email: mpgallon@duanemorris.com
Attorneys for Petitioner

Attorney Ref.: E9227.01590

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing is being served, via regular U.S. Mail this 26th May, 2010 upon the Registrant as listed on the PTO Website as:

Cole Electric Inc
1800 N. 14th Street,
Herrin, IL 62948



Michelle P. Gallon
Duane Morris LLP
1180 W Peachtree St NW
Suite 7
Atlanta, GA 30309-3448
Tel: 404-253-6995
Fax: 404-253-6901
email: mpgallon@duanemorris.com
Attorneys for Petitioner